HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.14079 OF 2005

DATED: 28.10.2005

Between:

The Depot Manager, APSRTC,

Karimnagar-II depot and another

… Petitioners

and

1. B. Vidya Sagar
2. The Industrial Tribunal-cum

   Labour Court, Godavarikhani

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.14079 OF 2005

ORAL ORDER:

The APSRTC is before this court assailing the award of the Labour Court,

Godavarikhani, dated 11.11.2004 in I.D.No.149 of 2003.

The first respondent, a conductor of Karimnagar Depot, was removed from service pursuant to a departmental enquiry, by proceedings dated 15.7.2002 on charges of having committed ticketing irregularities. Aggrieved thereby, he preferred an appeal to the Divisional Manager concerned. By the order dated 19.10.2002, the Divisional Manager found the 1st respondent herein technically guilty of the charges as framed and confirmed the finding of the primary authority as to the charges having been proved. The appellate authority however observed that the workman had not committed any ticketing irregularities earlier. Therefore, giving credit to his past good record, the appellate authority took a lenient view and disposed of the appeal directing reinstatement into service. The penalty of removal from service imposed by the primary authority was modified to one of deferment of annual increments for a period of two years with cumulative effect, treating of the absence from removal till reinstatement as 'not on duty' for all purposes, and a direction that the workman pay the security deposit afresh before joining new posting.

Aggrieved by the orders of the appellate authority, the 1st respondent-conductor approached the Labour Court, under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act'). In the claim petition (in support of I.D.No.149 of 2003), the workman merely sought invalidation of the appellate authority's order dated 19.10.2002. The Labour Court, Godavarikhani, adjudicated upon the dispute presented in I.D.No.149 of 2003 and set aside the modified punishment imposed by the appellate authority, directed the writ petitioners to restore the increments of the claimant-workman herein and directed the writ petitioners to treat the period of absence of the workman as 'on duty'. The writ petitioners assailed the award on several grounds on merits of the conclusions arrived at by the Labour Court.

At the hearing of the writ petition, it was perceived that the jurisdiction of the Labour Court to have adjudicated upon the dispute presented in I.D.No.149 of 2003

was suspect.

Section 2-A (2) of the Act is an amendment to the Federal Legislation by the State after due approval of the amendment by the President, in accordance with the discipline required under Art.254 (2) of the Constitution. Section 2-A of the Act, in substance, enacts an exception to the substantive provisions of the Act, whereby disputes could be adjudicated by the Labour Courts or Industrial Disputes only upon reference by an appropriate Government. Section 2 (A) ordains:

> "Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

Sub-section (2) of Section 2(A) brought on to the Statute book by the A.P. amendment, enables a workman as specified in sub-section (1) of Section 2-A, to make an application directly to the Labour Court for adjudication of the dispute referred to in sub-section (1). On receipt of such application, the Labour Court is consecrated the jurisdiction adjudicate upon it as if it were a dispute referred to or pending before it, in accordance with the provisions of the Act. The State amendment also ordains that on such presentation of the dispute before the Labour Court, all the provisions of the Act would apply in relation to such dispute as in other industrial dispute.

The State amendment is a remedy available to a workman who has suffered discharge, dismissal, retrenchment or termination from service or a dispute or difference connected with or arising out of such an event. The legislative intent underlying the State amendment is clear and admits of no ambiguity. It is not every dispute that an individual workman has with the employer, which is susceptible to adjudication by the Labour Court or the Industrial Tribunal. Only the severest of the

employer's actions, which bring about a cessation of the service nexus, specified in Section 2-A that constitute the jurisdictional fact substratum for the exercise of jurisdiction by the Labour Court and on a direct application by the workman.

Expanding the scope of the Labour Court's jurisdiction beyond the expressed parameters permitted by the phraseology of the State amendment is impermissible and would also violate the Constitutional discipline. A State amendment to a Federal Legislation, ought to be strictly construed so as not to expand the scope of the State amendment to the Federal Legislation beyond the limits of the amendment as approved by the President.

In the case on hand, the 1st respondent-workman was initially visited with the penalty of removal from service. Such penalty was legitimately an aspect that could have been adjudicated or presented for adjudication before the Labour Court in the light of the conferral of jurisdiction to the Labour Court and under the presents of Section 2-A (2) of the Act. The 1st respondent-workman, however, chose to prefer a departmental remedy by way of an appeal to the Divisional Manager. The appellate authority having considered the workman's appeal, has in plenitudinous exercise of appellate jurisdiction and giving credit to the past clean record of the 1st respondent and taking what the appellate authority recorded was a "lenient view" modified the penalty of removal from service to one of deferment of annual increments for a period of two years with cumulative effect. As a result, the penalty of removal imposed by the primary authority stood effaced and was substituted by the lesser penalty of deferment of annual increments for two years with cumulative effect for the period specified by the appellate authority.

After the appellate order dated 19.10.2002, the order of removal passed by the primary authority against the 1st respondent-workman ceased to exist, it suffered a plenary eclipse. There was, therefore, no removal from service of the 1st

respondent or any dispute connected therewith that could properly have formed the subject matter of the adjudicatory jurisdiction of the Labour Court, within the meaning of the expression in Section 2-A (2) of the Act. The 1st respondent could not have approached the Labour Court for an adjudication of the validity of an order of deferment of annual increments for two years with cumulative effect or treating the period of his earlier absence from service as 'not on duty'. These two species of disputes are not the specified species of disputes which are consecrated to the jurisdiction of the Labour Court under Section 2-A (2) of the Act. In fact, the 1st respondent did not claim before the Labour Court either, that the order of his removal passed by the primary authority was still in force, and aggrieved thereby he seeks invalidation of such order of removal. The singular dispute presented before the Labour Court by the 1st respondent was a dispute arising out of his grievance as to the order of deferment of annual increments for a period of 2 years with cumulative effect and treatment of the period of his absence as 'not on duty'.

On the aforesaid analysis, in the considered view of this court, the award of the Labour Court impugned in this writ petition suffers from a patent lack of jurisdiction and is void.

Sri P. Sridhar Rao, learned counsel for the 1st respondent-workman strenuously contends that since the appellate authority had taken a lenient view of the matter, the order of removal as passed by the primary authority still *stares in his face.*

This contention does not commend acceptance by this court. As analyzed, the penalty of removal from service passed by the primary authority stood wholly effaced by the appellate order substituting the penalty with one of stoppage of annual increments for 2 years with cumulative effect. No penalty of the primary authority, therefore, "stares in the face" of the first respondent, thereafter.

This contention is also inconsistent with the facts on record. The grievance of the first respondent before the Labour Court was not as regards the order of removal. His claim was only as regards the order of the appellate authority substituting the primary authority's order with a penalty of stoppage of two annual increments with cumulative effect.

The learned counsel placed reliance on the judgment of this court in (a) P. HABEEB SAHEB V. APSRTC (1.) and the judgment of a learned Single Judge (b) dated 29.7.1999 in W.P.No.14708 of 1995. The first is a judgment of a Division Bench. The Division Bench in (a) above was considering the issue whether an order of a departmental reviewing authority upholding the primary penalty of removal from service as confirmed by an appellate authority and directing the employee to be appointed afresh on compassionate grounds could be treated as an order passed in modification of the punishment of removal. This court held not. In W.P.No.14708 of 1995 (b) above, a learned single Judge of this court was considering the question whether the Labour Court had jurisdiction to consider a dispute seeking invalidation of an order of termination. None of the above two judgments, therefore, either on facts or on the *ratio decidendi* offer support for the contention of the 1st respondent as regards the maintainability of the I.D. before the Labour Court.

Another judgment relied upon on behalf of the 1st respondent is a judgment of a learned single Judge of this court dated 23.7.2002 in W.P.No.22076 of 1996. This decision merits consideration and analysis as to whether it provides sustenance for the 1st respondent's contention (as to maintainability of the I.D).

In the above decision, the writ petitioner, the APSRTC challenged an award of the Labour Court. The first respondent, since deceased, was a Conductor in the employment of the writ petitioner. He was removed from service on a charge of

unauthorized absence. The workman preferred a departmental appeal, unsuccessfully. He then carried the appellate order to a review authority. The review authority confirmed the order of removal, but directed fresh appointment of the workman to service. The workman thereafter, raised an industrial dispute numbered as I.D.No.625 of 1992. By an award dated 21.3.1994, the labour court held the domestic enquiry vitiated and directed reinstatement of the workman without back wages, but with continuity of service. It was such an award that was challenged before this court by the APSRTC.

The APSRTC, in support of its challenge had *inter alia* contended that the industrial dispute itself was not maintainable as there was no order of dismissal or reduction in rank, which could have been the subject matter of an industrial dispute. Rejecting this contention of the APSRTC, this court held in the judgment above that if the order of re-appointment had been in substitution or super-session of the order of removal, the contention of the RTC would have been acceptable. However, in the facts of the case before it, this court found that the order of the reviewing authority- the Regional Manager upheld the order of removal, but on compassion had directed re-appointment of the workman afresh. Therefore held this court, even after re-appointment the order of removal continued to exist. On the aforesaid analysis, it could not be said that there was no order of removal and the correctness of which could be canvassed before the Labour Court under Section 2-A (2) of the Act, held this court. This court categorically held on facts that the order of removal of the workman continued to exist though not operative and therefore the recourse to Labour Court under Section 2-A (2) of the Act was a legitimate and available remedy.

Every analysis of fact by a court is not the *ratio decidendi* that constitutes a principle that binds the court in a subsequent case. Only a ratio operates as a norm that binds a subsequent court in the resolution of a distinct matrix of facts that falls for

its consideration in a subsequent case. It is also a settled principle that *obiter dicta* is distinct from *ratio decidendi* and does not have the same degree of binding efficacy as a *ratio.* It is equally a well-settled principle of the theory of precedent that normally in extending and evaluating what constitutes the *ratio decidendi* of a decision, a subsequent court must carefully consider and sensitize itself that the resolution of a dispute on the facts of a particular case would not elevate such resolution to the status of a universal principle and constitute a norm of such universal application as to recommend its application to a different package of facts (Michael Dias Jurisprudence).

In W.P.No.22076 of 1996, this court categorically recorded a factual conclusion that in the facts of the said case, the order of the primary authority imposing on the workman therein the punishment of removal from service continued to exist on account of the reviewing authority upholding the order of removal, but directing re-appointment of the workman therein as a measure of compassion. There is thus no universal principle or a *ratio decidendi* discernible from the said decision that in all cases where an order of removal is varied or substituted by an appellate or reviewing authority, the order of removal passed by the primary authority continues to exist. A factual analysis in W.P.No.22076 of 1996 cannot be elevated to the level of a universal principle or a *ratio decidendi*. Such is not the established theory of precedent.

Another contention of the learned counsel for the 1st respondent-workman, that as the writ petitioners failed to raise any contention with regard to the patent lack of jurisdiction of the Labour Court, such an issue could not be considered *suo motu* by this court. This contention does not commend acceptance by this court. Jurisdiction constitutes the core of the authority of a court or Tribunal. The Labour Court is a creature of limited jurisdiction. Its jurisdiction, powers and authority are defined by the parent legislation. The Labour Court is not a Tribunal of plenary

jurisdiction which can conclusively determine the limits of its jurisdiction. This court is consecrated the powers of judicial review under Art.226 of the Constitution and a supervisory jurisdiction under Art.227 of the Constitution. When the order of an inferior Tribunal is presented for its consideration, it comes to the notice of this court that such inferior Tribunal has transgressed the clear limits of its jurisdiction and has proceeded to adjudicate upon a matter patently beyond its jurisdiction the Constitutional obligation of this court mandates the invalidation of such transgression by a Tribunal of inferior jurisdiction. The failure of the writ petitioner to have raised an issue as regards the maintainability of I.D.No.149 of 2003 does not absolve this court from exercising its Constitutional obligation to keep all inferior Tribunals within the limits of their ordained jurisdiction. This contention, therefore, does not merit acceptance and is accordingly rejected.

On the analysis above and for the reasons recorded, in the considered view of this court, the order of the Divisional Manager dated 19.10.2002 imposing on the first respondent the penalty of deferment of two annual increments with cumulative effect and treatment of the period of his removal as “not on duty” is a dispute not amenable to adjudication by the Labour Court under Section 2-A (2) of the Act. The award of the Labour Court dated 11.11.2004 in I.D.No.149 of 2003 is, therefore, patently without jurisdiction, *non est* and is so declared.

The writ petition is allowed but in the circumstances of the case without costs. Having regard to the fact that the award is declared invalid on account of patent lack of jurisdiction by the Labour Court, the grievance of the 1st respondent-workman in respect of the appellate authority order dated 19.10.2002 stands revived. The 1st respondent shall be at liberty to pursue his appropriate remedies against the order dated 19.10.2002 before an appropriate forum as advised.

GODA RAGHURAM, J

Date: 28.10.2005

Note: CC in two weeks

Bo

cvm